

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

In the Matter of

GENERAL ATOMICS
3550 General Atomics Court
San Diego, CA 92121
ID No.: CAD 067 638 957

Respondent.

Docket No. HWCA 00/01-2005

SETTLEMENT AGREEMENT AND
ORDER ON CONSENT

California Health and Safety Code
Section 25187

GENERAL PROVISIONS

The California Department of Toxic Substances Control (“Department”) and General Atomics (“Respondent”) enter into this Settlement Agreement and Order on Consent (“Settlement Agreement and Order”) pursuant to California Health and Safety Code (“HSC”), section 25187, in full settlement of their dispute as to the matters set forth herein, and agree as follows:

1. Facility. Respondent generates hazardous waste, mixed waste (waste that contains both RCRA hazardous waste and source, special nuclear or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. §§ 2011 *et seq.*)), and combined waste (waste that contains both non-RCRA hazardous waste and source, special nuclear or by-product material subject to the Atomic Energy Act of 1954, at the following site: General Atomics, 3550 General Atomics Court, La Jolla, California (“the Facility”). Respondent also treats and stores mixed and combined waste at the Facility under an interim status authorization issued by the Department on March 22, 1989.

2. Site Inspections: The Department inspected the Facility on various occasions, including August 12-15, 1996, February 24-27, 1997, and February 2-4, 1998. At or following these inspections, the Department requested and received supplementary documentation from Respondent regarding compliance with California financial responsibility regulations, as set forth in Title 22 of the California Code of Regulations (“Cal. Code Regs.”), sections 66265.140 *et seq.*

3. Department’s Allegations: Based upon these inspections and analysis of additional documentation submitted by Respondent, the Department alleges the following:

3.1 Respondent violated Title 22, Cal. Code Regs., section 66262.34(e)(3) in that on or about August 12, 1996, at Building 34 of the Facility, Respondent failed to remove hazardous waste (pump oil) in excess of 55 gallons from the point of generation, within three days of exceeding a total of 55 gallons.

3.2 Respondent violated Title 22, Cal. Code Regs., section 66268.50(b) in that on or about August 12, 1996, Respondent stored hazardous waste (one cubic yard of lead waste and three 55-gallon drums of lead waste) at Building 41 of the Facility for greater than one year, not solely for the purpose of accumulation of such quantities as are necessary to facilitate proper treatment or disposal.

3.3 Respondent violated Title 22, Cal. Code Regs., section 66265.143 in that prior to on or about June 20, 1997, Respondent failed to provide the Department with documentation of adequate financial assurance under this provision for the cost of closure of the Facility.

3.4 Respondent violated Title 22, Cal. Code Regs., section 66265.147 in that prior to on or about June 20, 1997, Respondent failed to provide the Department with documentation of

acceptable third-party liability coverage under this provision for sudden accidental occurrences at the Facility.

4. Respondent's Allegations: Based upon Respondent's review of the communications between the Department and the Respondent, and the facts concerning Respondent's financial assurance and insurance practices, the Respondent alleges the following:

4.1 Respondent's business and facility are unique in their mission. Ninety percent of Respondent's waste is considered U.S. Department of Energy ("DOE") waste for which DOE has accepted disposal responsibility. DOE has acknowledged responsibility for closure costs for 50% of the waste at Respondent's Nuclear Waste Processing Facility ("NWPF"). The lead waste stored at building 41 consisted of radiologically-contaminated lead generated at Respondent's facility where both privately funded and DOE funded work was performed. The lead waste represented an inseparable commingling of government and private mixed waste. DOE advised the Respondent that documented, commingled mixed waste is considered DOE-owned waste. DOE instructed Respondent not to dispose of DOE-owned waste at any facility other than a DOE facility. Resolution of ownership of the subject waste directly affected treatment and disposal options available to Respondent, which circumstances led to a delay in the disposal of this waste. During this time, and until the waste was properly disposed of, the waste was not properly labeled and safety stored.

4.2 Respondent has been required, since 1990, to provide financial assurances to the U.S. Nuclear Regulatory Commission ("NRC") for the estimated cost of closure of its entire site, including its interim status facility, the NWPF. The NRC's financial assurance requirements for closure are substantively identical to the Department's regulations, and result in a cleanup standard that meets

or exceeds the Department's criteria. Respondent's estimated cost of closure of the NWPF was developed to assure that the total amount would be sufficient to cover costs associated with remediating both radioactive and hazardous constituents of mixed and combined waste to levels which meet the NCR's and Department's criteria for release to "unrestricted use" (e.g., to levels of a few parts per trillion). Communication failures between the Department and Respondent led to a delay in submittal of California's forms documenting that this financial assurance was in place.

4.3 Based upon Respondent's Commercial Umbrella Liability Insurance policy, which includes pollution coverage, and which was in effect since 1995 in the amount of \$4.5 million, and prior thereto in the amount of \$4 million, Respondent met the substantive requirements of the Department for liability coverage. In addition, Respondent has had nuclear liability insurance in place since 1958 in the amount of \$36.7 million, the policy language of which is broad enough to include third party coverage required by the Department for damages caused by sudden accidental occurrences.

4.4 There was never any actual or potential harm to persons or the environment posed by circumstances at issue in the Department's and Respondent's allegations. The documented risk analysis for Respondent's facility concludes that there is no risk of a third party injury from hazardous constituents present at the NWPF, and the risk posed by potential "worst case" accident scenarios is minimal.

5. Dispute: A dispute exists between the Department and Respondent regarding the matters set forth in paragraphs 3 and 4 herein.

6. Jurisdiction: Jurisdiction exists pursuant to HSC section 25187.

7. Settlement of Disputed Claims: Respondent and the Department voluntarily enter into this

Settlement Agreement and Order pursuant to a compromise and settlement of the allegations and dispute set forth in paragraphs 3 and 4, above, for the purpose of avoiding prolonged and complicated litigation, and legal expenses and fees, and to further the public interest. This Settlement Agreement and Order shall constitute full settlement of the contested matters.

8. Non-admission: By entering into this Settlement Agreement and Order, Respondent does not admit to any of the allegations of the Department and the Department does not concede the allegations of Respondent are true.

9. Waiver of hearing: Respondent waives any right to a hearing on the content, terms and conditions of this Settlement Agreement and Order and on the allegations that are settled by this Settlement Agreement and Order.

COMPLIANCE

10. Compliance: The Department has concluded, based on inspections of the Facility and further submissions by Respondent, that as of June 20, 1997, Respondent was in full compliance with respect to the matters described in paragraph 3, above. The Department last inspected the Facility on September 28, 2000, and concluded that as of that date that Respondent remains in full compliance with the regulatory provisions at issue in paragraph 3, above.

10.1 Nothing in this Settlement Agreement and Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Settlement Agreement and Order.

PAYMENT

11. Within 30 days of the effective date of this Settlement Agreement and Order,

Respondent shall pay to the Department a total of fifty-thousand dollars (\$50,000) -- consisting of two payments, one for \$30,502.42 to be deposited into the Toxic Substances Control Account and the other for \$19,497.58 to be deposited into the Hazardous Waste Control Account for reimbursement of the Department's costs -- in full settlement of the disputed matters enumerated in paragraphs 3 and 4 of this Settlement Agreement and Order. These payments shall be made by checks payable to the "Department of Toxic Substances Control" and shall be delivered by Respondent's counsel, to:

Raïssa S. Lerner, Esq.
Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

A copy of each check shall be sent to:

Charlene Williams
Chief, Northern California Branch,
Statewide Compliance Division,
Department of Toxic Substances Control
700 Heinz Ave.
Berkeley, CA 94710

and

Joseph Smith, Esq.
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

11.1 Non-payment: In the event that Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to HSC § 25360.1, and to pay all costs incurred by the Department in pursuing collection, including attorneys fees. The Department also reserves the right to pursue all remedies available to it under applicable laws, including initiation of a civil action. Respondent shall retain all defenses to which it would be entitled.

OTHER PROVISIONS

12. **Enforcement Actions.** By agreeing to this Settlement Agreement and Order, the Department does not waive the right to take appropriate enforcement actions, except to the extent explicitly provided in this Settlement Agreement and Order. Except as expressly provided herein, nothing in this Settlement Agreement and Order is intended or shall be construed to limit or preclude the Department from exercising its authority under any law, statute or regulation. Nothing in this Settlement Agreement and Order is intended or shall be construed to limit or preclude any other government agency, department, board or entity from exercising its authority under any law, statute or regulation.

13. **Penalties for Noncompliance:** Failure to pay the settlement amount as called for in Section 11 of this Settlement Agreement and Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC § 25188 and other applicable provisions of law.

14. **Authority to Enter Agreement:** Each signatory to this Settlement Agreement and Order certifies that he or she is fully authorized by the party she or he represents to enter into this Settlement Agreement and Order, to execute it on behalf of the party represented and legally bind that party.

15. **Parties Bound:** This Settlement Agreement and Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement and Order.

16. **Effective Date:** The effective date of this Settlement Agreement and Order is the date it

is signed by the Department.

17. Integration: This Settlement Agreement and Order constitutes the entire agreement between the parties and may not be amended, supplemented or modified except as provided for in this Settlement Agreement and Order.

18. Modification of Agreement: This Settlement Agreement and Order may be modified only upon written approval of all of the parties hereto.

For General Atomics:

JOHN E. JONES

Dated: _____

John E. Jones

For the Department of Toxic Substances Control:

CHARLENE WILLIAMS
Chief, Northern California Branch,
Statewide Compliance Division

Dated: _____

Charlene Williams

Approved as to Form:

MARY L. WALKER, Esq.
BROBECK, PHLEGER & HARRISON

Attorneys for GENERAL ATOMICS

Dated: _____

Mary L. Walker, Esq.

BILL LOCKYER
Attorney General
THEODORA BERGER
Senior Assistant Attorney General
RA]SSA S. LERNER
Deputy Attorney General
CALIFORNIA DEPARTMENT OF JUSTICE

Attorneys for DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Dated: _____

Ra^ssa S. Lerner, Esq.

U:\OEA\WEBSITE\WEB_PO~1\CONSENT2.WPD